

Item SPR05-05 Response Form

Title: **Appellate Procedure: Notice of Settlement** (amend Cal. Rules of Court, rule 20)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **only if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

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| DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2005 |
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council, the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.
All comments will become part of the public record of the council's action..*

Invitation to Comment (SPR05-05)

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| Title | Appellate Procedure: Notice of Settlement (amend Cal. Rules of Court, rule 20) |
| Summary | This proposal would amend rule 20 to require that an appellant who has filed a notice of settlement file either an abandonment or a request to dismiss an appeal within 45 days. |
| Source | Appellate Advisory Committee Justice Joyce L. Kennard, Chair |
| Staff | Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov |
| Discussion | <p>Rule 20 of the California Rules of Court requires that if a civil case settles after a notice of appeal has been filed, the appellant must immediately serve and file a notice of settlement in the Court of Appeal. The notice of settlement advises the court that additional work on the appeal may not be necessary. Currently, however, some appellants do not follow up the notice of settlement by timely filing either an abandonment or request to dismiss. Until an abandonment or request to dismiss is filed, the appeal remains on the court's docket without a final disposition.</p> <p>To ensure that appeals do not remain in limbo on the court's docket after the filing of a notice of settlement, the Appellate Advisory Committee is proposing that rule 20 be amended to require that the appellant file an abandonment or request to dismiss within 45 days after filing a notice of settlement, unless the court has ordered a longer time period on a showing of good cause. The 45-day period is designed to give the appellant an opportunity to take any steps necessary to finalize the settlement, such as memorializing an oral settlement agreement in writing or paying an agreed on settlement amount. In addition, the court would be specifically authorized to dismiss the appeal if the appellant does not file an abandonment or request to dismiss within the required time period.</p> <p>Rule 20 is similar in concept to rule 225 which requires that parties at the trial court level file a dismissal within 45 days after filing a notice of settlement. The Judicial Council is currently seeking comments on a proposal from the Civil and Small Claims Advisory Committee to amend rule 225 to make its notice of settlement requirements applicable only when the entire case settles. The Appellate Advisory</p> |

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Committee invites comments on whether rule 20 should also be amended to make its provisions applicable only when the entire case settles.

To avoid confusion, the Appellate Advisory Committee also proposes that new subdivision (a)(4) be added to clarify that the notice of settlement requirement does not apply to appeals in which the parties are seeking the court's approval of a settlement involving a stipulated reversal of a trial court decision. This approval must be sought through a motion procedure that results in an order containing statutorily required findings. In these stipulated reversal proceedings, the court would address settlement when it considers the required motion. The notice of settlement requirement of section 20 is therefore not necessary in these cases.

Attachment

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Rule 20 of the California Rules of Court would be amended, effective January 1, 2006, to read:

Rule 20. Settlement, abandonment, voluntary dismissal, and compromise

(a) Notice of settlement

- (1) If a civil case settles after a notice of appeal has been filed, the appellant must immediately serve and file a notice of settlement in the Court of Appeal. If the parties have designated a clerk's or a reporter's transcript and the record has not been filed in the Court of Appeal, the appellant must also immediately serve a copy of the notice on the superior court clerk.
- (2) If the case settles after the appellant receives a notice setting oral argument or a prehearing conference, the appellant must also immediately notify the Court of Appeal of the settlement by telephone or other expeditious method.
- (3) Within 45 days after filing a notice of settlement—unless the court has ordered a longer time period on a showing of good cause—the appellant must file either an abandonment under (b) if the record has not yet been filed in the Court of Appeal, or a request to dismiss under (c) if the record has already been filed in the Court of Appeal. If the appellant does not file an abandonment or request to dismiss within the specified time period, the court may dismiss the appeal unless good cause is shown why the appeal should not be dismissed.
- (4) This subdivision does not apply to a settlement that requires findings to be made by the Court of Appeal under Code of Civil Procedure section 128(a)(8).

(b) Abandonment

- (1) Before the record is filed in the Court of Appeal, the appellant may serve and file in superior court an abandonment of the appeal or a stipulation to abandon the appeal. The filing effects a dismissal of the appeal and restores the superior court's jurisdiction.
- (2) The superior court clerk must promptly notify the Court of Appeal and the parties of the abandonment or stipulation.

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1 (c) Request to dismiss

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3 (1) After the record is filed in the Court of Appeal, the appellant may serve and
4 file in that court a request or a stipulation to dismiss the appeal.

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6 (2) On receipt of a request or stipulation to dismiss, the court may dismiss the
7 appeal and direct immediate issuance of the remittitur.

8 9 (d) Approval of compromise

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11 If a guardian or conservator seeks approval of a proposed compromise of a pending
12 appeal, the Court of Appeal may, before ruling on the compromise, direct the trial
13 court to determine whether the compromise is in the minor's or the conservatee's
14 best interests and to report its findings.